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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,123	12/29/2003	Robert Burnett	AL139195	9801
75930	7590	04/03/2009	EXAMINER	
GARLICK, HARRISON & MARKISON (ALU) P.O. BOX 160727 AUSTIN, TX 78716-0727			PASCAL, LESLIE C	
		ART UNIT	PAPER NUMBER	
		2613		
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		04/03/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/750,123	<b>Applicant(s)</b> BURNETT ET AL.
	<b>Examiner</b> Leslie Pascal	<b>Art Unit</b> 2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 December 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 28-37 is/are pending in the application.
- 4a) Of the above claim(s) 28-31 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 32-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/DP/0656)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 34-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification does not disclose information that is in the new claims. There is no teaching in the original specification that "the network element is operable to determine pass-through wavelengths in response to the wavelengths transmitted in a first direction by the network element ARE NOT EQUAL TO THE WAVELENGTHS SPECIFIED IN THE WAVELENGTH TOPOLOGY MAP BEING TRANSMITTED BY THE ADJACENT NETWORK ELEMENT IN THE SECOND DIRECTION" (emphasis added) of claims 34 and 36. "Determine pass-through wavelengths in response to the wavelengths being dropped from a second direction by the network elements ARE NOT EQUAL TO THE WAVELENGTHS SPECIFIED IN THE WAVELENGTH TOPOLOGY MAP BEING TRANSMITTED BY TEH ADJACENT NETWORK ELEMENT IN A SECOND DIRECTION TO THE NETWORK ELEMENT" Of claim 35.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 2613

4. Claim 35 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what he applicant is claiming in regard to claim 35. How can pass-through wavelengths be dropped? It is unclear where it is passed through and where it is dropped.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramaswami et al (5781537) in view of Wu et al (2002/10781886)

Ramaswami et al teach generating a wavelength topology table (figure 3) and forwarding and updating the tables at each node (column 7, lines 29-60). Although he does not specifically teach determining a topology map in a first direction and a second direction, it would have been obvious to do that since the information about all required wavelengths is sent in the topology map to all adjacent nodes. Further, it teaches that the update message that is sent lists the adjacent up links to the node and their wavelength usage. Since all information with regard to a certain direction are sent to each adjacent node, it would have been obvious to send only information that would affect each node only in order to save memory at each node by sending non relevant information to each node. In regard to claim 36, Ramaswami teaches broadcasting topology information during a periodic update procedure by broadcasting pertinent topology information (column 7, lines 36-38). Ramaswami teaches that during updating, each controller sends to each neighboring controller a list of wavelengths that go over the link connecting them (column 7, lines 66-67 and column 8, lines 1-3). If each controller is sending a list during the update process to each of the neighboring nodes, a node would receive topography data including wavelengths from nodes in opposite directions.

Although Ramaswami does not teach specifics about how the map is sent, Wu et al teaches that it is well known to use either in-band or out-of-band wavelengths as the

Art Unit: 2613

control channel (paragraph 8) in a system that sends forwarding tables (paragraph 20). It would have been obvious to use a dedicated channel, which is an out-of-band wavelength in order to send updating tables as taught by Wu et al. In regard to determining the pass through, see the last full paragraph of column 7 of Ramaswami et al. It says that each node determines all of the wavelengths that go through it (pass through it). Further, it would have been obvious to determine the pass-through wavelengths in order to avoid the expense of processing signals that are not to be used at a station or node. It is inherent that Ramaswami et al has transponders that send the information. In regard to claims 34-36, it would have been obvious to determine that wavelengths in the two directions are not equal in order to avoid collisions. See the above 112 rejections. In regard to claim 36, Ramaswami teaches broadcasting topology information during a periodic update procedure by broadcasting pertinent topology information (column 7, lines 36-38). Ramaswami teaches that during updating, each controller sends to each neighboring controller a list of wavelengths that go over the link connecting them (column 7, lines 66-67 and column 8, lines 1-3). If each controller is sending a list during the update process to each of the neighboring nodes, a node would receive topography data including wavelengths from nodes in opposite directions. In regard to claim 37, an optical network is used to send the signals which are on wavelengths in both directions.

7. In regard to the applicants' response of 12-29-08, the applicants' amendment has overcome the 35 USC 112, first paragraph rejection. The applicant has added new claims which include new matter. In regard to the 35 USC 103 rejection, the applicant argues that Ramaswami does not teach sending topology maps in two different directions to adjacent network elements. It appears obvious that since Ramaswami periodically updates topology information (column 7, lines 36-38) by each node periodically broadcasting pertinent topology information that he says includes wavelength. If the signal is broadcast by a node, it is sending information in both directions. If the adjacent nodes are also periodically updating and broadcasting topology information, it is unclear what the applicant is arguing. It would have been obvious to consider this to be a topology "map" since it is sending such information. The applicant says that Ramaswami teaches away for the topology map and cites column 4, lines 64-column 5, line 10 which discusses how connections are set up. This is not relevant to how Ramaswami updates topology information. The fact that he can change topology information is the reason that he updates the information. The applicant never discusses the relevant passages of Ramaswami or gives any explanation why the portions specified by the examiner do not read on the claims. The claims are VERY broad. Updating wavelengths in both directions are taught by Ramaswami. Updating the topology information by sending it in both directions is taught by Ramaswami.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 2613

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Pascal whose telephone number is 571-272-3032. The examiner can normally be reached on Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Pascal/  
Primary Examiner  
Art Unit 2613